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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 8th day of June 1998

B e f o r e

THE HON'BLE MR.JUSTICE CHANDRASHEKARAI AH

W.P.No:15305/1997

BETWEEN:

1. Sri.Denial D'Souza, s/o Basthu  
D'souza, aged about 40 years,  
r/o Matasagara village, Kasaba  
Hobli, Sakleshpur taluk.

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2. Smt.Magdline D'Souza, w/o.  
late Basthu D'Souza, aged about  
65 years, r/o Matasagara village,  
Kasaba hobli, Sakleshpur taluk. ... Petitioners;

(By Sri. S.V.Narayana Murthy )

AND:

1. The State of Karnataka, rep.  
by its Secretary to Government,  
Rural Development and Panchayat  
Raj, Department, M.S. Buildings,  
Dr.Ambedkar Veedhi,  
Bangalore-560 001.

2. The Assistant Commissioner,  
Sakleshpur sub-division,  
Sakleshpur.

3. The Secretary, Mandal Panchayat,  
Malali Gram Panchayat, Kasaba hobli,  
Sakleshpur, taluk.

4. Smt.Ratnamma, w/o H.P.Sangappa,  
aged about 60 years, Kollahalli,  
Matasagara Post,  
Kasaba hobli, Sakleshpur taluk. ... Respondents;

( Sri.K.Nagaraja, HCGP for R1 and R3;

Sri. S.N.Hatti, for R-4;

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Writ Petition is filed under Arts.226 and 227 of the Constitution praying to quash the order dated 11-2-1997 (Annexure-G) passed by the 2nd respondent.

This petition coming on for preliminary hearing in B group this day, the Court made the following:-

O R D E R

On the application filed by the petitioner for grant of site, the then Mandal Panchayat has granted a site measuring 40' x 60' in his favour. The location of the site is in dispute. The contention of the 4th respondent is that the said site is not in Gramathana but it is in survey No.5 of Matasagara village.

2) The case of the petitioner is that the site in question is a gramathana site and not in the survey ~~survey~~ number. It is submitted that the 4th respondent has already filed a civil suit for injunction as against the petitioner in the Court of the Munsiff Sakleshpur and it is pending consideration.

3) The case of the petitioner as stated earlier is that the site is a gramathana and it was granted in his favour in the year 1990. Thereafter, the petitioner filed an application for grant of licence to construct the building in the said site. On that application the Gram Panchayat has granted the licence. This licence was challenged by the 4th respondent in appeal before

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the Assistant Commissioner. The Assistant Commissioner also set aside not only the licence but ~~grant made~~ made by the Gram Panchayath in favour of the petitioner. This order is challenged in this petition, ~~in appeal.~~

4) There is no reason for the Assistant Commissioner to set aside the grant itself. Therefore, to the extent of setting aside the grant is concerned, the Assistant Commissioner was not right. So far as the grant of licence is concerned, I feel it just and necessary to restrain both the petitioner and respondent-4 to put up any construction till the matter is disposed of one way or the other in the Civil Court which is pending consideration before the Munsiff, Sakleshpur. Further, the grant of Hakku patra by the Gram Panchayat in favour of the petitioner is subject to the decision that may be rendered by the Civil Court.

5) Accordingly, writ petition is allowed in part. The impugned order passed by the Assistant Commissioner setting aside the grant made in favour of the 1st petitioner is quashed. The writ petition insofar as it relates to the grant of licence <sup>is concerned</sup> is dismissed. However, the parties are at liberty to move the Panchayat for appropriate relief after the disposal of the civil suit.

Sd/-  
JUDGE

